

WILSON, ELSER, MOSKOWITZ
EDELMAN & DICKER LLP
Attorneys for Defendants
Village of Pomona, Brett Yagel and Doris Ulman
1133 Westchester Avenue
White Plains, NY 10604
(914) 323-7000
Attn: Janine A. Mastellone, Esq.
John B. Martin, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TAL PROPERTIES OF POMONA, LLC,

Plaintiff,

-against-

VILLAGE OF POMONA, BRETT YAGEL, MAYOR OF
THE VILLAGE OF POMONA,

Defendants.
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: Docket No. 7:17-cv-02928-CS
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: **DECLARATION IN SUPPORT**
: **OF MOTION TO DISMISS**
: **PLAINTIFFS' SECOND-**
: **AMENDED COMPLAINT**
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:
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: X

JANINE A. MASTELLONE, an attorney duly admitted to practice law before the Courts of the State of New York, and the United States District Court for the Southern District of New York, hereby declares pursuant to the penalty of perjury and 28 U.S.C. §1746 as follows.

1. I am a partner in the law firm Wilson, Elser, Moskowitz, Edelman & Dicker LLP, attorneys for defendants Village of Pomona, Brett Yagel, Mayor of the Village of Pomona (“Mayor Yagel”), and Doris Ulman (“Ms. Ulman”), who is the Village Attorney of the Village of Pomona (collectively, “defendants” or “the Village”), in the above-captioned action.¹

¹ The caption of the second amended complaint does not name Ms. Ulman as a defendant and does not name Avrohom Manes, the alleged principal of plaintiff TAL Properties of Pomona, LLC, as a plaintiff. *Compare*, First Amended Complaint. Nonetheless, the allegations in the second amended complaint identify Mr. Manes and Ms. Ulman as a plaintiff and defendant, respectively, and therefore they are identified as such for purposes of this motion, though plaintiff TAL should be required to amend the caption to reflect the proper parties. In addition, Ms.

2. I submit this declaration in support of defendants' motion to dismiss the second amended complaint (D.E. #16) filed by plaintiffs TAL Properties of Pomona, LLC ("TAL") and Avrohom Manes ("Mr. Manes") (collectively, "plaintiffs"), a copy of which is annexed hereto as **Exhibit A**.

3. Annexed hereto as **Exhibit B** is a copy of plaintiffs' original complaint filed with the New York State Supreme Court, Rochester County on March 17, 2017 (D.E. #1, Exhibit A).

4. Annexed hereto as **Exhibit C** is a copy of the notice of removal (without exhibits) filed by defendants in this Court on April 21, 2017 (D.E. #1).

5. Annexed hereto as **Exhibit D** is a copy of plaintiffs' first amended complaint, which was filed in this Court on July 5, 2017 (D.E. #10).

WHEREFORE, for the reasons set forth in the accompanying memorandum of law, the motion to dismiss plaintiffs' second amended complaint, with prejudice, should be granted in its entirety.

I declare that the foregoing is true and correct. Executed this 16th day of October 2017.


Janine A. Mastellone

Ulman's name is misspelled in the second amended complaint, so she is referenced here by her correctly spelled name.